

### **III. REMARKS**

#### **Status of the Claims**

Claim 1-3 are amended to clarify the shape and relative nature of the movement of the locking elements. Claims 1-10 remain under consideration.

#### **Summary of the Office Action**

Claims 1, and 10 stand rejected under 35USC103(a) on the basis of the cited reference Humphreys, U.S. Patent No. 5,825,874 in view of the teaching of Hsu, U.S. Patent No. 5,694,468. Claims 1-10 stand rejected under 35USC103(a) on the basis of the cited reference Wijas, U.S. Patent No. 5,463,688, in view of the reference Hsu. The Examiner is respectfully requested to reconsider his rejection in view of the following remarks.

#### **The Invention**

The invention, as described in claim 1, comprises a holder for a cellphone which relies on friction to engage and hold the phone in the holder. L-shaped elements are arranged to receive the phone on their base portions and pivot with downward motion of the phone so that the phone is grasped between the stem portions. Resilient surfaces provide increased frictional engagement. A further mechanism allows the L-shaped elements to be latched in the holding position. The amendment, contained herein, further clarifies the nature of the invention and is not intended narrow the scope of the claims.

#### **Discussion of the Cited References**

The Examiner has withdrawn the rejections based on anticipation and has cited the combined teachings of Humphreys and Hsu and the

combination of the teachings of Wijas and Hsu to support the rejection based on anticipation.

The Examiner has characterized the mechanism described in the reference Humphreys as having surfaces **"for clamping a cellphone (300) by means of friction between the locking elements (204) and the shell of the phone;"** and the reference Wijas as having a locking mechanism, **"for clamping a cellphone by means of friction between the locking elements (121,122) and the shell of the phone;"**.

Applicant submits that these statements are inaccurate. In each of the mechanisms described in Humphreys and Wijas the cellphones are held in place by a mechanical latching in which a latch member of the holder engages a mating feature of the cellphone. This makes use of the holder limited to a specific configuration of cellphone. The rigid side walls of these devices also limit the use of the holders of Humphreys and Wijas to a specific cellphone design. Each of these devices are illustrative of the problem to which the solution of this application is addressed.

In Humphreys, latches 112a and 112b engage slots 402a and 402b respectively (see figure 5B). In Wijas, "short latching surfaces 132 and 142" engages notches 404 in telephone 400 (see column 8, lines 17-25). In the subject application, the cellphone is held in place "solely by means of friction" (see claim 1). The examiner admits in the office action that the holders of Humphreys and Wijas are essentially cellphone specific. Each of the latching mechanisms are spring loaded to maintain the mechanical latching functions, see springs 210a and 210b of Humphreys and spring 175 of Wijas.

This is clearly stated in Humphreys at column 2, lines 55-59, as follows:

"when a mobile telephone is in the locked position in the holder, the mobile telephone is held in place by spring driven latches that apply pressure on opposite sides of the telephone from each side of the holder. The latch on each side of the holder is formed on the end of an arm. The inward pressure at each latch is generated by a spring that causes a rotational force on the arm a fixed axis."

and in Wijas at column 8, line 66 to column 9, line 8, as follows:

"Because the cylindrical button 170 is located between the right retractable latch member 130 and the left retractable latch member 140, the upward exerted by the spring-loaded cylindrical button 170 promotes contact between the short latching surfaces 132 and 142 of the respective right retractable latch member 130 and left retractable latch member 140 and the corresponding shallow front notches 404. This permits adequate latching and retention of the telephone 400 without requiring long latching surfaces and deep corresponding front notches."

In the subject application, the cellphone is held in place "solely by means of friction" (see claim 1). The examiner admits in the office action that the holders of Humphreys and Wijas are essentially cellphone specific.

The above differences not only are irreconcilable with the device of the subject invention, but are also irreconcilable with the teaching of Hsu. Even a cursory review of figure 1 of Hsu reveal the relatively huge size of the pads 15 of Hsu when compared to the mechanical latches of the cited references. Applicant submits that it would not be obvious to one skilled in the art to modify these disclosures to achieve the solution of the subject application.

This is further supported in the reference Wijas by the last sentence of the above quoted excerpt which implies that large latching surfaces are undesirable, thereby teaching away from any such combination.

The Examiner has also indicated that both Humphreys and Wijas employ L-shaped locking elements. Applicant submits that this requires an extremely broad interpretation of the term L-shaped. In reviewing the profiles of the latching elements 204 of Humphreys and elements 130 and 140 of Wijas, one is hard pressed to imagine the letter L. Claim 1, as amended, clarifies the functions of the portions of the L-shaped locking elements of the subject application. It is now abundantly clear that the latching elements of the cited references Humphreys and Wijas are not in any way equivalent of the L-shaped locking elements of this invention.

The mechanisms of the references Humphreys and Wijas, therefore do not support the premise on which the rejection under 35USC103 is based.

The Examiner has cited the holder of the reference Hsu as teaching that Humphreys and Wijas can be modified to obtain the locking mechanism described in claim 1.

In the device of Hsu, the locking surfaces are moved only linearly (in a specific direction back and forth) as stated in the Summary of the Invention, second paragraph, as follows:

"....the radiotelephone cradle according to the present invention mainly includes two side arms capable of translating outward or inward relative to each other, a driving means formed from two crossed members, a base with two forward projected legs, and a back panel. The crossed driving means is positioned between two back plates of the side arms to engage with elongated slots formed on the back plates. Two traction springs separately and

longitudinally extend between two ends of the crossed members at the same side thereof to normally pull the side arms outward for positioning the radiotelephone into the cradle. When one of the side arms is pushed inward, the two side arms move toward each other due to the linked crossed driving means, and thereby firmly hold the radiotelephone therebetween."

The arm elements of the cradle of Hsu operate in an entirely different manner to the device of this application. The arms of Hsu do not pivot, but are mounted for lateral movement against biasing springs.

### **The Issue of Obviousness**

The Examiner has rejected all of the claims as being obvious over Wijas in view of Hsu and has rejected claim 1 and 10 as being obvious over Humphreys in view of Hsu. However, as stated above, there are significant incompatible features in the teachings of the cited documents which are obstacles to their combination. The teachings of the cited documents are not combinable, as they do not have a common concept of operation, as argued by the Examiner.

According to basic tenets of patent law, in order to support an obviousness rejection, there must be some suggestion of the desirability of making the modification, aside from the subject application. The claimed invention must be considered as a whole and the references must suggest the desirability and thus the obviousness of making the modification, the references must be viewed without the benefit of hindsight. (See MPEP sections 706.02(a) and 2141. Applicant submits that the modification of the teachings of Wijas and Hsu or Humphreys and Hsu in order to obtain the invention, as described in amended claim 1, submitted herein, would not have been obvious to one skilled in the art. There is no indication that such a modification would be

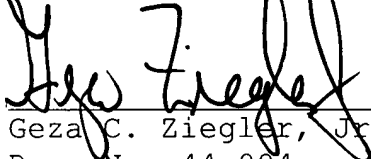
desirable. The Examiner has failed therefore to present a prima facie issue of obviousness with respect to these claims.

It is improper for the Examiner to rely on bits and pieces of a reference in isolation to find a claimed invention obvious under 35USC103 where an objective reading of the entire disclosure of the cited patent teaches away from the claimed invention. (Akzo N.V. v United States International Trade Commission, 808F.2<sup>nd</sup> 1471). One of ordinary skill in the art would not have been motivated to contravene the statements in Wijas to accomplish the desired result of the subject application in an entirely different manner with completely different means.

In view of the remarks stated above, Applicant submits that all of the claims under consideration contain patentable subject matter and favorable action by the Examiner is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

  
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